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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|---|
| Proceeding | 91217589 |
| Party | Plaintiff Rhythm Holding Limited |
| Correspondence Address | JOHN L WELCH LANDO & ANASTASI LLP ONE MAIN STREET, 11TH FLOOR CAMBRIDGE, MA 02142 UNITED STATES jlwtrademarks@lalaw.com, paliesq@gmail.com |
| Submission | Opposition/Response to Motion |
| Filer's Name | John L. Welch |
| Filer's e-mail | jlwtrademarks@wolfgreenfield.com |
| Signature | /johnlwelch/ |
| Date | 06/29/2015 |
| Attachments | Opp 91217589 OPPOSER'S RESPONSE TO APPLICANT'S REPLY.pdf(31779 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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|-------------------------|---|----------------|
| _____ |) | |
| RHYTHM HOLDING LIMITED, |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. |
| |) | 91217589 |
| J & N SALES, LLC, |) | |
| |) | |
| Applicant. |) | |
| _____ |) | |

OPPOSER’S RESPONSE TO APPLICANT’S “REPLY”

Opposer RHYTHM HOLDING LIMITED, by its counsel, responds as follows to “APPLICANT’S REPLY IN SUPPORT OF MOTION TO COMPEL” served by mail on June 11, 2015 [Paper No. 11].

Applicant’s supposed “Reply” is not a reply at all, but is in fact a motion to compel discovery. Applicant states that it filed its Reply “for the limited purpose of addressing selected responses served by Opposer for the first time in opposition to Applicant’s motion.”

Opposer Rhythm did not serve its interrogatory responses “in opposition to Applicant’s motion.” It served its responses in order to avoid further dispute over the number of interrogatories served by Applicant. Although Rhythm continued to maintain its position that the number of interrogatories served by Applicant exceeded the permissible limit of 75, Rhythm decided, rather than prolong the discussion about how to

count the interrogatories, to serve its responses in view of applicant's comments regarding the scope of the interrogatories.

Applicant now seeks an Order compelling Rhythm to address certain interrogatory responses as to which Applicant is dissatisfied. However, Applicant has made absolutely no attempt to resolve any issues that it has with Opposer's responses. Applicant's counsel never contacted Oppose before filing its "Reply," and he certainly did not comply with Rule 2.120(e), which requires a "written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences."

Because applicant did not comply with Rule 2.120(e), its "Reply" should be stricken as improper and should be given no consideration.¹

RHYTHM HOLDING LIMITED



John L. Welch
Wolf Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
jlwtrademarks@wolfgreenfield.com
617-646-8000

¹ In fact, on June 13, 2015, counsel for Rhythm wrote to Applicant's counsel, urging that the "Reply" be withdrawn due to Applicant's failure to comply with Rule 2.120(e). No response was received.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 29th day of June, 2015, by mailing a copy thereof via first-class mail, postage pre-paid, to James A. Power, Jr., Esq., Power Del Valle LLP, 233 West 72nd Street, New York, NY 10023.



John L. Welch